Supreme Court, U.S.
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No. (1)

In The

Supreme Court of the United States

MADISON ANDERSON,

Petitioner,

v.

FORD MOTOR CAR COMPANY,

Respondent,

On Petition for A Writ of Certiorari
To the Michigan Supreme Court
For the State of Michigan

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Can the Michigan Supreme Court as supervisory and superior court jurisdictionally over its inferior courts have power/authority to join with its inferior courts to penalize the Petitioner by denying him full access to the courts due to his exercise of his Constitutional right under the Michigan Constitution, to appear before its courts in Pro Per?

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IN THE SUPREME COURT OF THE UNITED STATES

MADISON ANDERSON, PETITIONER

V

FORD MOTOR CAR COMPANY, RESPONDENT
ON PETITION FOR WRIT OF CERTIORARI
TO THE MICHIGAN SUPREME COURT
FOR THE STATE OF MICHIGAN

Petitioner respectfully prays that a Writ of Certiorari issue to review the Orders of the Michigan Supreme Court entered in this matter on December 27, 2005 and February 27, 2006, respectively.

Question presented whether the Michigan Supreme Court as supervisory and superior court jurisdictionally over its inferior courts have power/authority to join with its inferior courts to penalize the Petitioner by denying him full access to the courts due to his exercise of his Constitutional right under the Michigan Constitution, to appear before its courts in Pro Per.

PARTIES

MADISON ANDERSON, a citizen of the State of Michigan and employee of the Ford Company, identified as Petitioner and Ford Motor Car Company, employer of the Petitioner and identified as the Respondent.

OPINIONS BELOW

The Opinion of the Michigan Supreme Court, whose Judgment is herein sought to be reviewed and is reprinted in this Appendix, page 11, the prior Opinions of the Michigan Court of Appeals reported as # 253090 and the Third Judicial Circuit for the County of Wayne, Wayne County, Michigan, pp. 7.

The orders of the Michigan Supreme Court, the initial order denying the Plaintiff's application for Leave to appeal and the denial of Plaintiff's motion for Reconsideration resulting in a subsequent order (Appendix) pp. 11. Also, the prior opinions of the Michigan Court of Appeals reproduced at Appendix pages 7-10.

BASIS FOR JURISDICTION

The Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the first section of the Fourteenth Amendment to the Constitution of the United States which provides as follows:

> "All persons born of naturalized in the United States, and subject to the jurisdiction of the United Sates, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

This case reflects how the Courts of the State of Michigan have chosen to deny the Petitioner access as demonstrated in his Application for Leave to Appeal in the Michigan Supreme Court:

1. The controversy in the instant case resulting in an appeal to the Court of Appeals involved two Summary Disposition Decisions rendered by the Honorable Daphne Means Curtis, Judge of the Wayne County Circuit Court, 3rd Judicial District.

2. The First of the Summary Disposition Decisions came in the form of a Partial Summary Disposition Grant favorable to the Defendant under MCR 2.116(C)(8) resulting in dismissal of Count 2 of Plaintiff's Complaint based on hostile environment allegations.

3. The Plaintiff argued in his response at the Lower Court and in his Appeal to the Michigan Court of Appeals without success that the Lower Court erred reversibly under MCR 2.116(C)(8) when it granted the Partial Summary Disposition Motion to the Defendant in spite of its failure to meet the test for such Grant.

4. A Motion under MCR 2.116(C)(8) permits the granting of a Summary Disposition determination when "the opposing party has failed to state a claim on which relief can be granted." The focus of MCR 2.116(C)(8) is whether the opposing party's Pleadings allege a prima facie case. Morocco v. Randlet, 431 Mich. 700, 707; 433 NW2D 681 (1988). Instructively, the Court "does not act as a fact finder" but accepts as true all well pleaded facts. Abel v. Lily & Co., 418 Mich. 331, 324; 343 NW2d 164 (1984). Unless the claim is unenforceable as a matter of law that no factual development can possibly justify right to recover, the Motion should be denied. Patrick v. Muscat, 84 Mich. App. 724, 729-30; 270 NW2d 506 (1978).

5. Evidently, both the Trial Court and the Court of Appeals did not discern even the possibility of racial animus being present within the context of the Plaintiff's entrance into the work place environment as a Waste Water Operator previously absent of a Black employee.

6. It is obvious to the Plaintiff but not so obvious to the Lower Court and the Court of Appeals that a disregard of the test for granting MCR 2.116(C)(8) Motions precludes the factual development of Plaintiff's initiating and continuing battle as an employee of Defendant that has been entrenched in racial animus.

7. Specifically, the Defendant contends in its Brief as support for dismissing the Plaintiff's Hostile Environment Count that as a matter of law, Plaintiff's Complaint fails on the basis of the Third and Fourth

Elements articulated in Radtke v. Everett, 442 Mich. 368; 501 NW2d 155 (1993). (See copy of Plaintiff's Complaint, marked App. 18.)

8. In Radke v. Everett, supra, the Michigan Supreme Court set forth the five elements necessary to establish a prima facie case of discrimination based on a Hostile Work Environment Claim. (1) the employee belonged to a protected group; (2) the employee was subjected to an unwelcome racial harassment; (3) the harassment complained of was based on race; (4) the harassment had the effect of unreasonably interfering with Plaintiff's work performance and created an intimidating, hostile or offensive work environment; and (5) there existed respondent superior liability.

9. Responding briefly to the Defendant's assertions of Plaintiff's Third and Fourth element deficiencies that should defeat Plaintiff's Hostile Environment Count. Firstly, the Third element (harassment based on race) of race has been a predominating issue surrounding Plaintiff's initial placement as a Waste Water Treatment employee.

Although the Defendant has attempted to show that the employee situations complained of between Stu Rindfusz and Plaintiff represents simply a work place feud, it fails to confront the actual facts that Stu Rindfusz, a Caucasian without previous employment history with the Defendant, was employed as a Waste Water Operator in circumvention of Plaintiff, a Black employee of the Defendant for many years.

Consequently, it required the intervention of the Courts before the Plaintiff was allotted recognition as an employee in spite of his race to enjoy the status of a Waste Treatment Operator, thus, the Plaintiff's entrance as bearer of the status, "Waste Treatment Operator" might have been legally won but not without resentment and racial animus at its very core.

10. Notably, the Defendant's attempted isolation of

Plaintiff's allegations to show lack of racial animus (persuaded the Court of Appeals) should be deemed ineffective to foreclose further factual disclosures under MCR 2.116(C)(8). See e.g. Jackson v. Quanex, 191 Fed. 3d 647, 660 (6th Cir. 1999), where, that Court spoke precisely to the point this Plaintiff wishes to make when it wrote in pertinent part:

"Under the totality of circumstances approach, a distinct Court should not carve the work environment into a series of discrete incidents and then measure the harm occurring in each episode (citations omitted). In rejecting the narrow approach adopted by the District Court in this case, we recently observed that when a Lower Court desecrates the claims of Plaintiff alleging a hostile Work Environment contrary to a totality of circumstances approach, it robs the incidents of their cumulative effect, and of course, when the Complaints are broken into their theoretical component parts, each claim is more easily dismissed (citations omitted). As the Third Circuit has put it, "[a] play cannot be understood on basis of some of its scenes but only on its own performance, and similarly, a discrimination analysis must concentrate not on individual incidents, but on overall scenario (citations omitted). To consider each offensive event in isolation would defeat the entire purpose of allowing claims based upon a "hostile work environment" theory, as the very meaning of environment is the surrounding conditions, influences or forces which influence or modify."

11. Secondly, the United States Supreme Court in Harris v. Forkliff Systems, 570 US 17; 114 Led2d 367 ( ) provided the necessary response to the Defendant's contention of the Plaintiff's Fourth element insufficiency (the unreasonable interference with Plaintiff's work performance). In Harris v. Forkliff Systems, supra, the Supreme Court explained that the question of whether the alleged or inferred conduct constituted harassment unreasonably interfering with an employee's performance must be judged by both

an objective and subjective standard – the conduct must be severe or persuasive enough to create an environment that a recognizable person would find hostile or abusive, and the victim must subjectively regard that environment as abusive. Black v. Zaring Homes, Inc. 104 F3d 822; 826 (6th Cir. 1997).

Since our State Courts have for the most part followed the Federal Court's direction relative to Title VII decisions, the Plaintiff believes that the totality of circumstances standard imposed in Black, supra but apparently disregarded by the Court of Appeals as evidenced by its silence would prevent the conclusion that there exists no basis in Plaintiff's Complaint to show either directly or inferentially the establishment of the Fourth element.

In sum, the Defendant Motion for Partial Summary Judgment under MCR 2.116(C)(8) should not have been confirmed by the Court of Appeals.

12. As previously noted, the Plaintiff opposed the Court's grant of Defendant's Motion for Summary Disposition under MCR 2.116(C)(10) based on racial discrimination under the Elliot-Larsen Civil Rights Act.

13. Courts, when ruling on a Summary Disposition Motion under MCR 2.116(C)(10) on the grounds that there is no genuine issue of material fact, are liberal in finding that a genuine issue exists, drawing all inferences in favor of the non-moving party, and granting the Motion only when the Court is satisfied that it is impossible for the claim to be supported at trial because of some deficiency that cannot be overcome Langeland v. Bronson Methodist Hospital, 178 Mich. App. 612; 444 NW2d 146 (1989); Grochowalski v. Detroit Automobile Inter-Insurance Exchange, 171 Mich. App. 771; 430 NW2d 822 (1988) App. Den. 432 Mich. 931 (1989).

14. The Court of Appeals in its opinion of August 8, 2005, upheld the Lower Court's grant of Defendant's

Motion for Summary Judgment under MCR 2.116(C)(10).

15. It is the continuing contention of the Plaintiff that both the Lower Court and Court of Appeals erred reversibly by its failure to address the material facts and credibility issues remaining in the instant case and thereby prevented it from the utilization and confirmation of the matter under MCR 2.116(C)(10).

16. In the instant case, the Defendant has skillfully reconstructed the facts in Plaintiff's complaint to obtain its desired result.

17. Contrary to the Defendant's contention as to the gravamen of Plaintiff's Complaint is to show discrimination based on (1) suspension, due to allowance by Plaintiff of untreated wastewater to flow from Ford's Wixom facility into the City of Wixom's water supply; (2) the issuance of Plaintiff's written warning after Plaintiff was seen away from the post; and (3) failure to assign the Plaintiff over-time after Plaintiff failed to utilize Ford's computerized over-time survey.

18. Further, the Defendant has attempted to rearrange the facts by attempting to arrange the facts by means of Plaintiff's deposition testimony and documents to indicate an actual overflow of waste water into the City of Wixom occurred on August 15, 2000. (See Stu Rindfusz's Report itself of this incident that refutes on its face Defendant's contention, marked App. 34).

19. More accurately, it is the Plaintiff's allegations that the similar situated White employees like that of the Plaintiff who are White have monitored the treatment of waste water under conditions where the readings reflect overflowing tanks and attending alarm without being subjected to reprimand or penalty. (The similar situation White employees are well aware that the monitoring system was malfunctioning at the time of reprimand and consequently necessitates a visual

observation to ascertain whether the tanks threaten to overflow.

20. Within the above context, it is the Plaintiff's allegations that in spite of the similar situated White employee's knowledge of the monitor malfunctions, along with our supervisors, they have by their silence implicitly, if not directly, conspired to defeat Plaintiff's claim.

21. Consequently, the in-admission of the video that was taken by Plaintiff subsequent to his reprimand to show under similar circumstances that resulted in Plaintiff's reprimand, the White employees rather characteristically disregarded as meaningless in spite of monitor readings reflecting overflowing tanks.

22. Unquestionably, the Plaintiff was prejudiced by the video's inadmission whose value was dismissed by the admitted affidavits of Alex Frey (General Supervisor in the Central Maintenance at the Ford Motor Company, Wixom Plaint, wherein he stated "that it is impossible to have a simultaneous overflow in three tanks without waste water backing up into the plant...the only way to demonstrate such a simultaneous overflow is to physically manipulate the buoys, in each of the three tanks."

Pointedly, the testimony of Alex Frey attacks the credibility of the Plaintiff's video screening offered to show similar situated occurrences where the monitor screen reflects "inaccurately" overflowing tanks. If it could have been demonstrated that the monitor screen was operating improperly and did on many occasions show a false reading of simultaneous tank overflowing, the credibility of the Plaintiff's contention would be firmly established. Secondly, if Alex Frey's indication of impossibility as to having simultaneous readings of overflowing without hand manipulation, then, it provides an equal reasonable inference that Stu Rindfusz hand manipulated the monitoring system to indicate overflowing tanks on August 15, 2000. (The day that the Plaintiff,

> Anderson, was operating). The Plaintiff wishes to advise the Court that Alex Frey's Affidavit is partly based on the observation of Plaintiff's video that was placed in the hands of Defendant's counsel during discovery. Obviously, then it was necessary that the video be mad. available to the Court. [Plaintiff has a copy of Defendant's Deposition Video reflecting his handing over the video 05/07/2003.] Alex Frey was not present in the building when Stu Rindfusz took the log sheet out of the log book and took it all the way to Alex Frey's front office. This prevented the Plaintiff, Anderson, from logging in when he returned after lunch at 12:10 P.M. (See Daily Log Sheet of 8/15/2000 marked App. 31).
>
> The important point that the Plaintiff wishes to make by providing two alternative explanations above is to show both factual and credibility issues prevailing in the instant case. Summary Judgment grounded on absence of genuine material fact issue is not properly granted where issue to material fact turns on credibility of an affiant or witness whose deposition has been taken. Doe v. Oceola, 84 Mich. App. 514, 270 NW2d 796 (1978). Appeal after remand 106 Mich. App. 671; 308 NW2d 796 (1981). Stated another way, a question that turns on credibility of a witness may not be resolved on a Motion for Summary Judgment. Whitcraft v. Wolfe, 148 Mich. App. 40; 348 NW2d 400 (1985), App. Den. 425 Mich. 865 (1986). Where truth of a material factual assertion of a movant's affidavit depends on affiant's credibility, therein here is a genuine issue to be decided by a trier of fact and a Motion for Summary Judgment cannot be granted. Brown v. Pointer 390 Mich. 346; 212 NW2d 201 (1973).

In response to the above Application For Leave to Appeal, the Order of December 27, 2005 SC: 129379 tersely stated:

> "On order of the Court, the Application for Leave to Appeal the August 9, 2005 Judgment of Court of Appeals is considered, and it is denied, because, we are not persuaded that the questions presented should be reviewed by this

Court."

The present Petitioner as Plaintiff-Appellant, responded to the pre-mentioned Order of December 27, 2005 SC: 129379 on January 17, 2006 by means of a Request for Reconsideration of its Denial. The entire substance of the reconsideration request is set forth:

1. The above court in its order of denying the Plaintiff's APPLICATION FOR LEAVE TO APPEAL SIMPLY states in essence that it was not persuaded that the questions presented should be considered.

2. As an in proper Appellant and citizen of this state, such a brief and terse statement leaves plaintiff-Appellant in a state of wonderment and confusion due to the lack of reasons provided or absence of legal authority cited forming the basis for the court's conclusion(s).

3. When the Appellant reads the DEFENDANT-APPELLEE FORD MOTOR COMPANY'S BRIEF IN OPPOSITION TO PLAINTIFF-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL, the Appellant is troubled as to how a proper conclusion can be reached while the critical and material facts necessary for a correct resolution has been misstated or mislaid.

4. In this regard, the factual or important material component that provokes a major question that must be answered is – whether an overflow or discharge of wastewater occurred?

5. The Plaintiff-Appellant's answer to this fundamental questions is "NO."

6. The Defendant-Appellee throughout its brief argues "yes" such an overflow occurred.

7. The Defendant-Appellee states on pages 2-3 of its Brief the following in pertinent part:

"At approximately 1:10 P.M. the wastewater

overflow alarm activated again, indicating that a tank full of untreated wastewater had overflowed into a tank of treated wastewater (Exhibit 1), Anderson Dep at 94-95, (Exhibit 2, August 18, 2000 Disciplinary Action Report). Consequently, untreated wastewater was released into the City of Wixom.

Plaintiff was written up and suspended from work for three days because of the overflow (See Disciplinary Report of, August 18, 2000 marked App. 34).

Notably, in the history of the Wixom Plant no other wastewater operator in Plaintiff's Department ever allowed untreated wastewater to mix with treated wastewater and escape the facility, (Exhibit 3, Affidavit of Alex Frey at #5). The most similar incident to Plaintiff's mishap occurred several years earlier, in the Wixom Facility Paint Shop, in that case, a Caucasian employee caused a tank of chemicals to overflow into the Wastewater Department. As a result of the incident, the employee was suspended from work for 5 days, a period two days longer than Plaintiff's suspension (See Don Herrin's Disciplinary Action Report, marked App. 36-37). Here, the cost to the company was $29,073.00.

8. In response to the above, Plaintiff-Appellant wishes to revisit the Disciplinary Action Report of 8/18/2000 offered by Defendant-Appellee to establish the occurrence of an overflow; however, a close reading of the report shows a clear refutation of Appellee's claim. The disciplinary Action Report of 8-18-2000 is reproduced in verbatim.

"On August 15, 2000, Mr. Anderson was assigned operations which is monitoring and treatment of wastewater. Mr. Anderson's last readings were taken at 10:00 A.M. The Batch Tank high level alarm went off at 12:05 and overflow alarm went off at 1:10 P.M. This indicates untreated wastewater was entering the treated wastewater being discharged. Mr. Rindfusz switched flows to prevent this, while Mr. Anderson

was not present. If wastewater was allowed to be discharged, this would violate our discharge permit with the City which could cause a Notice of Violation and possible fines."

Notably, as further substantiation of Plaintiff-Appellant's claim and currently as Petitioner that no overflow occurred, and no cost was ever attributed to the Plaintiff's alleged misconduct

9. Further, and more importantly, Plaintiff-Appellant was indeed present at the time when overflow alarm went off. As a matter of fact, Plaintiff-Appellant responded to the alarm by inspecting the tanks and as a result discovered no apparent possibility of an overflow. (Plaintiff-Appellant's lunch hour began at 11:30 A.M. and by 12:10 P.M. that afternoon the Plaintiff had returned.)

10. Apparently, the Defendant-Appellees retained the belief that the Plaintiff-Appellant was absent when the overflow faulty alarm sounded due to the absence of signatured evidence that the Plaintiff-Appellant presence was due to the fact that Stu Rindfusz had deliberately removed the log paper (denying Plaintiff-Appellant an opportunity to evidence his presence by logging in his signature and recording his findings) see copy of log paper and how Stu Rindfusz wrote upon it in an effort to foreclose Plaintiff-Appellant from responding contrarily to his false report). (See App. 31).

11. Notably, the Defendant-Appellee proceeds in its Brief as though the wastewater overflow occurred, resulting eventually in allegedly affecting the City of Wixom.

12. Consequently, such a misstatement of fact provides the basis for the Defendant-Appellee contention that the Plaintiff cannot make a prima facie case of racial discrimination, i.e. Plaintiff cannot identify a similarly-situated employee that was treated differently. Defendant had a legitimate reason for Plaintiff's suspension. Plaintiff cannot make a prima

facie case for employment discrimination based on his reprimand for being away from his assigned post, the reprimand does not constitute an adverse employment action, Defendant had a legitimate non-discriminatory reason for reprimanding Plaintiff for being away from his assigned post.

13. Obviously, to establish a prima facie case of racial discrimination based on circumstantial or indirect evidence a Plaintiff must demonstrate that he or she was (1) a member of a protected class, (2) subject to an adverse employment action, and (3) that a non-protected, similarly-situated employee was treated more favorably. Smith v. Goodwill Industries of West Michigan, Inc., 243 Mich App 438, 447-48, 622 noted 337 (2000). Even if a prima facie case can be made, an employer may defeat the claim by identifying a legitimate non-discriminatory reason for its actions Debrow v. Century 21 Great Lakes, Inc., (after remand), 463 Mich 554; 620 Noted 836(2001).

14. Plaintiff-Appellant contends that a proper construction of the facts should show perhaps the sounding of an alarm designed to indicate an overflow occurring on or about August 15, 2000 but due to the malfunctioning system, no actual overflow occurred.

15. Under an accurate reconstruction of the facts indicating the absence of an actual overflow, it would permit the Plaintiff to show that other similarly-situated wastewater operators who coincidentally were Caucasian had confronted a like circumstance where the alarm and light indicated an overflow (non-existent due to malfunctioning equipment) but no reprimand or fear of such action being taken against them.

16. The un-admitted video in the possession of the Plaintiff and made available to Defendant-Appellee Counsel showed unmistakably the existence of such a similar-situated circumstance, (notably, there existed widespread knowledge among the wastewater

operators of the frequent malfunctions surrounding the alarm system and of its inability as an accurate indicator of an actual overflow occurring.

17. Defendant-Appellee argues assuming arguendo the Plaintiff unable to make a prima facie case of discrimination.

18. The Defendant-Appellee continues the above assumption by concluding that the Defendant, Ford, had a non-discriminatory reason for reprimanding the Plaintiff based on dereliction of duty, causing an overflow.

19. If there existed no overflow as the Plaintiff-Appellant steadfastly maintains, the reprimand could not be justly based (the current lawsuit grew out of Plaintiff's challenge of the reprimand – it has never been determined that the Plaintiff was negligent in the dispensing of his duties).

20. Pointedly, the Plaintiff-Appellant request for the Court's grant of his APPLICATION OF LEAVE TO APPEAL is not based on mere error correction founded not only upon substantial and material omissions or inaccuracies effecting the entire actual analysis resulting in a questionable accurate finding under MCR 2.116(C)(8) or (10) but such erroneous application of the law has substantially effected both the personal and property rights of the Plaintiff-Appellant irreparably.

See e.g. MCR 7.20, 203(b) setting forth the principles that generally govern the court's consideration of an APPLICATION FOR LEAVE TO APPEAL. See also Downey v. Charlevoix County Bd. Of County Road Comm'rs, 227 Mich App 621, 625-6; 576 NW 2d 712 (1998) where it was determined under a MCR 2.116 (C) (10) Summary Disposition Motion the court may not assess credibility or make findings of fact but must consider, from all reasonable inferences from the record evidence, whether a genuine issue of any material fact exists to warrant a trial.

Subsequently, on February 27, 2006, the Michigan Supreme Court, in its Order SC: 129379 responded to the Plaintiff-Appellant Motion For Reconsideration with precisely the same wording that attended its initial denial of Plaintiff-Appellant request for Application For Leave to Appeal:

> On Order of the Court, the Motion For Reconsideration of this court's Order of December 27, 2005 is considered, and it is denied, because it does not appear that the Order was entered erroneously.

At precisely the same February 27, 2006 date that the Michigan Supreme Court had issued the above-noted Order denying the Plaintiff-Appellant Motion For Reconsideration, the Supreme Court accepted and stamped a Supplement to Plaintiff-Appellant Motion For Reconsideration.

In the Supplement, it showed how the Defendant, Ford Motor Car Company, through its Supervisory and Administrative personnel, changed his work hours in connection with an earlier reprimand and orally expressed threat that if he failed to keep his rescheduled hours he would face "serious consequences". (The Plaintiff understood this threat to mean the loss of his job if he should fail to comply.)

Thus, the consequences were that at the scheduled time set for a hearing on the earlier reprimand issue prompting the lawsuit against Ford Motor Car Company in the first instance, the subsequent reprimand demanding his strict adherence to the shift change denied him the opportunity of being present in court to seek admission of the video that was crucial to establishing the similar situation element of the race discrimination count.

Further, the Supplement did seek to show how subtle and deceptive was the conduct of the Defendant in denying the Appellant full access to the Court by the Court's inaction and refusal to respond to the substantive questions that remained unresolved. The fundamental points that the Plaintiff-Appellant wanted to make in his Supplement were two. The first was that the State Lower Courts acted in total disregard of the Petitioner as an In Pro Per Plaintiff exercising his Right under the Michigan Constitution, Art. 1 § 13. Secondly, by arguing analogously regarding the misdemeanor statute in relation to jury duty/employer improper duty, it would stand to reason that an employer who acts to deny a complainant his "day in Court" should face some form of punishment as a means of deterrence.

In short, due to the Order of February 27, 2006 denying the re-hearing Motion For Leave to Appeal and the Supplement was accepted within this

same time frame, the Supplemental material was never considered by the Supreme Court but was returned to Plaintiff-Appellant as being untimely for consideration.

Upon consideration of the disparate treatment claim of Petitioner due to racial discrimination, the Michigan Court of Appeals chose to track the reasoning and factual articulation by the Defendant-Appellee with total disregard for what the Plaintiff-Appellant in Pro Per set forth. Pointedly, the Court focused on the adverse employment action as a necessary element for sustaining the Plaintiff-Appellant racial discrimination claim. Continuing, the Court referred to the nature of "a materially adverse employment action... such as termination of employment, a demotion evidenced by a decrease in wage or salary, etc." Wilcoxon, supra at 363. Notably, as a further instance of the Court's foreclosure, non-disclosure or recognition of facts germane to this very issue presented to the Court by the Plaintiff-Appellant in Pro Per within the context of this instant case, the Plaintiff was confronted with the threat that he would lose his job if he did not comply to a shift change that was associated with a reprimand of Plaintiff, allegedly for failing to recognize such shift change (Plaintiff had worked the afternoon shift on October 20, 2003 through October 22, 2003). Although there was a Wastewater Treatment Plant schedule notifying Plaintiff to report to the day shift, Plaintiff-Appellant prior to the day shift announcement could be implemented advising him to report on the afternoon shift commencing on the October 20th date. Furthermore, the Plaintiff-Appellant advised the Defendant-Appellee that he had retained a recording of Mr. Hegberg's telephone call. Somehow, in spite of the fact that the Defendant-Appellee was possessed of this knowledge of the telephone call – you guessed it? This vital information that was tantamount to indicating a material adverse employment action was minimized by the Defendant-Appellee's response and somehow totally disregarded by the Court.

Critically, the overlooking of this reprimand and the consequences of it cannot be glossed over, for it dramatically shows the Petitioner's contention that the shift change resulted in the inability of the Plaintiff-Appellant at that time to make the Court date of December 12, 2003. It was humanly impossible to work the shift imposed and make his scheduled Court date at the time set and thereby making the Court inaccessible to him. (See Disciplinary Report of October 23, 2003, marked App. 38). Here, the issue of the admission of the video was precluded from the Court's timely consideration. See admissibility standards of review for video tape involve the same criteria as photographs and movie pictures Hendricks v. Swenson, 456 Frd 503, 506 (8th Cir. 1972); see also Grimes v. Employers Mutual Liability Ins. Co., 73 F.R.D. 607 (D. Alaska 1972). In that case, the Court notes that "[M]otion pictures are generally admissible if authenticated and if relevant to the issues of the case.

A. Scott, photographic evidence, § 1291 at 142 (2d ed 1969), 8 AM JUR Proof of Facts p 153 (1960), Annot. 62 ALR 2d 686, 688 (1958). See, e.g. Feather River Lumber Co. v. United States, 30 F2d 642 (9th Cir 1929), Miles Laboratories, inc. v. Frolich, 195 F Supp 256 (SID. Cal 1961), Aff'd 296 F2d 740 (9th Cir 1961), Cert. Denied 369 US 865, 82 Sct 1030, 8 Led2d 84 (1962). See also Sanchez v. Denver & Rio Grande Western R.R. Co., 538 F2d 304 (10th Cir 1976), Cert. Denied 429 US 1042 (1977), footnote 1, p. 306, wherein the court notes that movies are admissible and "notably effective in many instances," so long as they are premised on a foundation of fairness and accuracy. Furthermore, the Federal Rules of Evidence treat movie film and video tape as photographs. See Fed R Evid. 1001(2).

Again, the Michigan Appeals Court proceeds from its belief that an actual wastewater spill occurred effecting the City of Wixom. From its opinion, it appears that the Court has gathered these facts from the statements contained in the Defendant-Appellee Brief at Pgs. 2-4 and the Affidavit of Frey. See, e.g. Defendant Brief submitted to Circuit Court For the County of Wayne, Case No. 02-238532-CZ, Hon. Daphne Means Curtis, Judge, where the statements appearing therein are reproduced as follows:

A. Untreated wastewater overflows on Plaintiff's watch. On August 15, 2000 plaintiff was assigned to monitor the wastewater tanks as he had done many times before. (Anderson Dep. at 86). Pursuant to Ford's internal policy, Plaintiff was required to take a reading of the volume of wastewater in the holding tanks every two hours (Anderson Dep. at 87). On the day in question, Plaintiff measured the volume of wastewater at 8:00 A.M. and 10:00 A.M. but failed to take a measurement of the wastewater two hours later, at noon (Anderson Dep. 87-88). In fact, Plaintiff was not even at his work station as 12:00 P.M. because he had left his post to get lunch. (Anderson Dep. at 88-94).

Shortly after 12:00 P.M. the high water alarm activated, signaling that there was a danger that the wastewater in one of the tanks was spilling over into another tank (Anderson Dep. 87-88). Although it is unclear whether Plaintiff was in the lab when the high water alarm initially activated, Plaintiff testified that at some point he returned to the lab and noticed that the high water alarm was triggered (Anderson Dep. at

> 91). He further testified that because he believed the alarm malfunctioned on occasion, he visually inspected the wastewater tanks and determined that the tanks were not overflowing (Anderson Dep. at 93). Not long after, however, at approximately 1:10 P.M., the wastewater overflow alarm activated, signaling that the tank full of untreated wastewater was overflowing into a tank of treated wastewater. (Anderson Dep. at 94-95).
>
> Consequently, untreated water was released into the City of Wixom as a result of the overflow. Plaintiff was written up and suspended from work for three days (See Anderson Disciplinary Action Report dated August 18, 2000, attached as App. 34). Additionally, Ford was required to provide written notification of the overflow to the City of Wixom. (Frey Affidavit).

Instructively, by way of reiteration, the Petitioner maintains that no wastewater ever overflowed into Wixom (the reference to the Anderson Disciplinary Report refutes the overflow statements made by the counsel(s) of the Defendant and the like information found in the Alex Frey Affidavit (The Frey Affidavit contained the following pertinent information:

> "2. On August 18, 2000, Mr. Anderson was issued a Disciplinary Action Report based on overflows which occurred at Wixom's Wastewater Treatment Facility on August 15, 2000); 3. As a result of Mr. Anderson's failure to properly monitor the wastewater treatment tanks, untreated wastewater was allowed to mingle with treated wastewater which was then discharged from the facility; 4. As a result of the error, Ford was required to notify the City of Wixom that 200 gallons of untreated wastewater had been mistakenly released. A letter from Ann McCormick, an Environmental Engineer at Ford memorializing this notification is attached to the Affidavit as Exhibit B."

Most importantly, the Anderson Disciplinary Action Report contained the conditional language term **"if"** Mr. Rindfusz had not acted, an overflow would have occurred. Secondly, the reference to a letter by Ann McCormick notifying the City of Wixom regarding a 200 gallon untreated wastewater overflow was never made a part of Plaintiff's materials received.

Furthermore, an overflow of wastewater could not have occurred, based on the Anderson Disciplinary Action Report. (See Alex Frey Affidavit, marked App. 13).

As a means of rebutting the Court's implication that no adequate response was made to the Frey Affidavit, the Petitioner points to its utilization of the Anderson Disciplinary Action Report to sustain his position and refute the opposing party (Ford Motor Company).

Assuming the refutation of the Court's and Defendant's construction of facts relative to the overflow, it would naturally follow that the absence of an overflow provides apt opportunity for ascertaining the video's relevance in showing that a similar situation did occur as captured by the video where it shows the activation of the alarms and a showing on the monitor an "overflow" in all three tanks while the Caucasian wastewater operators continued to work under similar conditions to the Petitioner, absent the fear of a reprimand. Of some import, the Court of Appeals, in its Decision, appears to dismiss the Plaintiff's allegation of being "off the job" as having no materially adverse consequences. However, the contention by the Court is misplaced, inasmuch as such allegation speaks to both the Hostile Environment Claim and the Disparate Treatment Claim. First, such action on the part of Defendant prompting the disciplinary action was an instance of the hostility that followed Plaintiff's every innocent act. (The Plaintiff had to leave his job to even get a drink of water much less go to lunch). (See August 31, 2000 Disciplinary Report, App. 35). Secondly, the Plaintiff asks of this Court, does material adverse consequences flow only to the job-related detriment. What about the change in "status" that acts upon one who is the victim of such harmful and spiteful activity. Pointedly, the Plaintiff's perception of conduct as being adverse was more than subjective – if this is disbelieved all one had to do was ask my doctors. The grant of the Summary Judgment prevented such a disclosure. (See August 31, 2000 Disciplinary Report, App. 35).

Under a restructured factual analysis, the disparate discrimination claim should have survived the MCR 2.116(C)(10) Summary Disposition Motion.

The Michigan Court of Appeals, in its factual and legal analysis of the Petitioner's "Hostile Environment" claim based on "Race" woefully lacks a historical perspective dictating a different result. Starting from a historical perspective in the instant case, objective racial animus is found to have acted upon the Petitioner as subject at his entrance as a classified Black Waste Water employee.

Undeniably, the above observation by the Petitioner is clearly evidenced and demonstrated by the fact that his initial entrance as a classified Black Waste Water Treatment employee of the Defendant was gained only through the intervention of the E.E.O.C. (See E.E.O.C. Settlement Agreement of 06/12/81 marked App. 15-16).

As the Petitioner who has been the subject of racial animus since the day he gained entrance as a Black Waste Water employee in 1979, I have cringed in both agony and disappointment upon receiving decision after decision indicating that I had not established my case based on race. [C]onclusory allegations and subjective beliefs... are wholly insufficient evidence to establish a claim of discrimination as a matter of law "Mitchell v. Toledo Hospital, 964 F2d 577 (65th Cir. 1992). [Plaintiff's] conclusory assertions that [his employer] must have had a discriminatory intent... without other facts to substantiate that claims are insufficient to avoid Summary Judgment." Collins v. Longview Fibre Co., 63 F3d 828 (9th Cir. 1995). Whether an environment is hostile and abusive can be determined only looking at all the circumstances. These include the frequency of the discriminatory conduct, its severity, whether it is physically threatening or humiliating or merely an offensive utterance "Bow v. Willow Run Comm. Schools, 2001 WL 889137 (Mich. App. 2001) (Citing Quinto v. Cross Peters, 451 Mich. 358, 370 n.g.(1996).

The decisions in Mitchell v. Toledo Hospital supra, Collins v. Longview Fibre Co., supra, and Bow v. Willow Run Community supra raise the question of whether a Summary Judgment or Summary Disposition Motion properly lie in the context of a historical perspective indicating racial animus at its commencement? [Such decision based on the Complaint solely]. The question stated another way: Does the evidenced fact of racial animus or discrimination disappear by the mere exercise of Court decision declaring otherwise?

Assuming historically that a particular work environment had been foreclosed to Blacks due to discriminatory practices and evidenced racial animus but suddenly opened to Blacks because of Court decision, it would not be unreasonable to assume that attitudes of discrimination and racial animus still existed.

Arguendo, let us assume that the discriminatory attitude and racial animus continued in the workplace in spite of Court decision, I do not believe that the pointing to a specific series of event(s) whether pervasive or not provides the exacerbating factors establishing a hostile environment.

Arguably, it is the Petitioner's contention that any party who is submerged every working day into such an environment of historically established discrimination and racial animus should be subject to some per se remedy if the conditions have remained the same.

Specifically, in the instant case, the Defendant, through its legal counsel, has termed the events alleged in Petitioner's Complaint as simply workplace feuds between employees (Madison Anderson and Stu Rindfusz).

If, however, the Court places such alleged activities within its racial context, there emerges the much larger and illuminating picture. Historically, the employer of Stu Rindfusz and the Petitioner, Madison Anderson as Waste Water Treatment employees involved around the twin questions of race and discrimination. In order to retain its non-Black status as associated with the previous Water Treatment employees of Defendant, Stu Rindfusz was hired from the outside. In this regard, the Petitioner (who is Black) was successful through the avenue of the Court to end the practice of discrimination which amounted to the exclusion of the Black person as an employee in the Waste Water Treatment Department of the Ford Motor Company.

Pointedly, the Petitioner was successful in breaking the color line in the Waste Water Treatment Department but it did not result in his replacement of Stu Rindfusz as a Wastewater Treatment employee.

Unfortunately, since Petitioner's entrance as an employee in the Waste Water Treatment Department, Petitioner has been made aware in so many subtle ways during his employ that he was unwelcome. Here again, it seems that Stu Rindfusz's name finds association with those activities surrounding his allegations of discrimination and unfairness.

Petitioner is not unaware as he ponders from the historical perspective those acts of impropriety exercised against him by Supervisor(s) and employees alike, as the unwelcome employee, of the Waste Water Department, due to his Blackness. Specifically, when he alleges in his Complaint, that the Supervisor (Frye) has discriminated against him by not providing him with an equal opportunity to work and thereby prevent him with somewhat equalized earnings when compared to his earnings and those of his co-Waste Water Treatment workers.

When viewed from the historical perspective, it does not surprise him that Supervisor, Frye and Stu Rindfusz would align themselves against him. Unknown to Supervisor Frye, the Petitioner was informed prior to his arrival as Supervisor that Frye had come for the purpose of firing him.

The years have passed since Frye's arrival without success in his firing but Petitioner has experienced an unexpressed "hell" in the workplace. Thus, this Petitioner thanks God that he has been wise enough never to express frustration, anger or disappointment by physical means but has retained his faith in the U.S. Constitution and the Court of Law to finally mete out justice.

Yes, Defense Counsel has readily expressed that the Petitioner has filed some 10 cases against the Defendant as if to represent to the Court that the frivolousness of such exercise, but I would be the first to remind this Court that the filing of such cases was not the fruitless exercise of a misdirected and disgruntled employee but that of a Black man determined to protect his interests that have been gained by the sweat of his brow from the very company that he has labored for over 50 (fifty) years.

By way of illustration, Stu Rindfusz acts during the time of Petitioner's operations of the Waste Water monitoring system to advise the Supervisory persons of a threatened overflow. Stu removes the logging paper utilized by the Petitioner to log in, signifying his presence and the status of the water tanks at the time in question. Such Log Sheet indicates an every two- (2) hour logging time whereas it is indicated the party responsible for logging and the amount of water being discharged. (Note: the logging time begins at 12:00 A.M.; Kratz was the person assigned. Such record shows Kratz logging every two (2) hours, i.e., 12:00 A.M., 2:00 A.M., 4:00 A.M. and 6:00 A.M.).

At 8:00 A.M. the Plaintiff was assigned to the logging as indicated by the arrow, it shows the #3 tank reflecting (54 tank is empty) –therefore a dash signifying no water being discharged. Again, at 10:00 A.M., the #3 tank shows emptiness again and the plaintiff marked a dash, indicative of no water being discharged by the Plaintiff. At 12:00 Noon Stu Rindfusz removed the Log Sheet, attesting to an overflow. Such an attestation cannot be sustained by the Log Sheet record itself. The Plaintiff left for lunch at 11:30 A.M. and returned at 12:10 P.M. Upon returning from Lunch, the Plaintiff discovered that Stu Rindfusz had removed the Log Sheet and attempted to justify its removal by alleging an overflow.

At 1:30 P.M. Stu Rindfusz (although unassigned to the tank) wrote that the #3 tank was still reflecting 54, indicating that the tank was still empty. Tank #1 contained 210,000 gallons; twenty-five (25) minutes later at 1:55 P.M., Stu Rindfusz still in possession of the Logging Sheet, wrote that #1 tank was reflecting only 86,000 gallons. If at the time of the Plaintiff's last logging at 10:00 A.M. reflects the #3 tank at 54 and the #1 tank containing 352,000 gallons, but no release of water by the Plaintiff.

Contrarily by both the 1:30 P.M. and 1:55 P.M. loggings, the #1 tank reflecting 210,000 and 86,000 gallons respectively, indicates 124,000 gallons being released by, obviously, Rinfusz who was in possession of the Logging Sheet.

The important point that this Logging Sheet underscores is that the Logging Sheet provides an entire fabrication of what really happened. In short, the logging indicates that the Plaintiff at no time discharged any water. According to the facts reflected on the Logging Sheet after Stu Rindfusz's removal, he would have been the only person who would have discharged water. (See log sheet of August 15, 2000, marked App. 31-33).

Based on Stu Rindfusz's report solely without confirmation of truth, the Petitioner was reprimanded and given three (3) days off. [Supervisor Frye the issuer]. The current controversy is the result of the reprimand.

An issue arises during the controversy surrounding the water monitoring system and the faultiness of its function. The report resulting in the reprimand states on its face that Stu Rindfusz acted to prevent an overflow.

Substantial and material factual question arises during the controversy due to the taking of a video by the Petitioner showing a similar situation like that of Petitioner resulting in a reprimand. Subsequently, an affidavit is taken with Frye as the affiant, 1) he swears to an overflow of waste water into Wixom (200 gallons) – [contrary to reprimand]; 2) he swears to a letter generated by Ann McCormick apologizing for overflow [never placed in the hands of Petitioner); 3) he swears that the monitoring system could never indicate an overflow occurring in all tanks without some personal manipulation (if as Frye suggests that the showing on the video of waste water overflow in all tanks was the product of the Petitioner's manipulation). Query: why should Frye be believed rather than what the video by the Petitioner clearly showed?

If, as Frye expressed that the water monitoring system could show an overflow by personal manipulation – then, it could be just as reasonably argued and asserted that Stu Rindfusz hand-manipulated the monitoring system to show an overflow in order to place the Petitioner in trouble and eventual reprimand meted out by Frye. (Coincidentally, Mr. Rindfusz assisted in the installation of the monitoring system).

The above actual and factual account provided as an illustration underlines this Petitioner's Appeal to the Supreme Court for a righting of the wrongs that are perpetuated but are obviously overlooked by the State Courts in the State of Michigan.

From this Petitioner's vantage point as an in Pro Per Plaintiff, the U.S. Supreme Court is his last resort as he seeks justice under law.

◆

REASONS FOR GRANTING THE PETITION FOR CERTIORARI

The privileges and immunities of United States Citizens as found under the Fourteenth Amendment infers that a State cannot abridge privileges of a Citizen of the United States, even though he is resident of State which undertakes to do so. Colgate v. Harvey, 296 U.S. 404, 80 Led2d 2991, 56 Sct. 252 (1935).

It is only the privileges and immunities of the Citizens of the United States which are placed by this clause under the protection of the Constitution. Slaughter-House Cases 83 U.S. 74, 16 Wall 74; 21 Led 394 (1873).

One of the important privileges and immunities of United States Citizenship secured by the Fourteenth Amendment against both public and private interference is right to unlimited and unimpaired access to Federal Courts. Chambers v. Baltimore Railway Company, Ohio, 207 U.S. 142; 52 Led 143; 28 Sct. 34 (1907).

◆

CONCLUSION

Wherefore Petitioner respectfully prays that a Writ of Certiorari be granted.

Respectfully submitted,

Madison Anderson

MADISON ANDERSON
Petitioner in Pro Per
3831 Kendall
Detroit, MI 48238
(313) 883-3610

APPENDIX

App. 1

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

MADISON ANDERSON,
Plaintiff

v.

FORD MOTOR COMPANY,
Defendant.

Case No.: 02-238532-CZ
HON. DAPHNE MEANS CURTIS

/

Madison Anderson
Plaintiff in Pro Per
3831 Kendall
Detroit, Michigan 48238
(313) 883-3610

Rick A. Haberman (P57269)
Dickinson Wright, PLLC
Attorney for Defendant
500 Woodward Ave., Ste. 4000
Detroit, Michigan 48226
(313) 223-3676

/

ORDER DISMISSING
PLAINTIFF'S CLAIM OF RACIAL HARASSMENT

At a session of said Court, held in the CAYMC Building, City of Detroit, County of Wayne, State of Michigan, on Feb 14 2003

PRESENT: /s/ HONORABLE DAPHNE MEANS CURTIS

FILED
CATHY M. GARRETT
WAYNE COUNTY CLERK
FEB 14 2003
By: /s/ CB

This matter having come before the Court on Defendant Ford Motor Company's Motion for Partial Summary Disposition, the Court having heard oral argument on January 24, 2003; and the Court being otherwise advised in the premises;

IT IS HEREBY ORDERED that Plaintiff's Claim of Racial

Harassment is hereby dismissed with prejudice.

/s/ Daphne Means Curtis
Circuit Court Judge

DETROIT 18260-2009 710280

STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT WAYNE COUNTY	REQUEST FOR HEARING ON A MOTION (PRAECIPE) ORDER / JUDGMENT	CASE NO. 02-238532-CZ

2 Woodward Avenue, Detroit, Michigan

Plaintiff name(s)		Defendant name(s)
MADISON ANDERSON	V	FORD MOTOR COMPANY
Plaintiff attorney, bar no., address, and telephone no. Madison Anderson Plaintiff In Pro Per 3831 Kendall Detroit, MI 48238 (313) 88303610		Defendant's attorney, bar no., address, and telephone no. DICKINSON WRIGHT PLLC Rick A. Haberman (P57269) Attorneys for Defendant MGM Grand Detroit LLC 500 Woodward Ave., Suite 4000 Detroit, Michigan 48226-3425 (313) 223-3500

List additional attorneys on other side

1. Motion Title: Motion To Settle Disputed Order
2. Moving Party: Ford Motor Company Telephone No. (313) 223-3500
3. Please place on the motion calendar for:

Judge	Bar No.	Date	Time
DAPHNE MEANS CURTIS		Friday, February 14, 2003	9:00 am

Adj. to: _____ Adj. to: _____ Adj. to:

4. I certify that I have made personal contact with Madison Anderson on 2/7/03 regarding concurrence in relief sought in this motion and that concurrence has been denied or that I have made reasonable and diligent attempts to contact counsel regarding concurrence with motion.

Date 02/07/03 Attorney /s/ Rick A. Haberman Bar No. P57269

ORDER /JUDGMENT

DATED: FEB 14 2003

IT IS ORDER THAT THIS MOTION IS:

_ DENIED _ GRANTED IN PART / DENIED IN PART

_ TAKEN UNDER ADVISEMENT _ DISMISSED

✓ GRANTED AND IT IS FURTHER ORDERED AND ADJUDGED:

Approved as to form and substance by Counsel for:

Plaintiff

Defendant

Date

FILED
CATHY M. GARRETT
WAYNE COUNTY CLERK
FEB 14 2003
By: /s/ CB

/s/ Daphne Means Curtis, Circuit Judge
2/14/03

MOTION FEE PAID

FILE EITHER IN PERSON OR BY MAIL WITH:

WAYNE COUNTY CLERK
201 CITY-COUNTY BUILDING
DETROIT, MI 48226

DETROIT 18260-2009 704512

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

MADISON ANDERSON,
Plaintiff,

Case No. 02-238532 CZ
Hon: Daphne Means Curtis

v

FORD MOTOR COMPANY,
Defendant.
_____/

Madison Anderson Plaintiff in Pro Per 3831 Kendall Detroit, Michigan 48238 (313) 883-3610	DICKINSON WRIGHT, PLLC Rick A. Haberman (P57269) Nakisha N. Chaney (P65066) Attorneys for Defendant Ford Motor Company 500 Woodward Avenue, Suite 4000 Detroit, Michigan 48226-3425 (313) 223-3500

_____/

ORDER GRANTING DEFENDANT FORD MOTOR COMPANY'S MOTION FOR SUMMARY DISPOSITION

At a session of said Court, held in the Coleman A. Young Municipal Center, City of Detroit, County of Wayne, State of Michigan, on: DEC 22 2003
PRESENT: Hon. DAPHNE MEANS CURTIS
Circuit Court Judge

This matter having come before the Court on Defendant's Motion for Summary Disposition; the parties having filed their respective response and reply briefs; oral argument having been conducted on December 12, 2003; and the Court being otherwise fully advised in the premises;

IT IS ORDERED that Defendant's Motion for Summary Disposition is hereby GRANTED for the reasons stated on the record on December 12, 2003. This order disposes of the last claims between the parties.

IT IS THEREFORE ORDERED that the above-captioned action is hereby dismissed with prejudice.

App. 6

HONORABLE DAPHNE MEANS CURTIS

A TRUE COPY
CATHY M. GARRETT
WAYNE COUNTY CLERK

By: /s/ CB,
DEPUTY CLERK

THE COURT OF APPEALS DECISION

A reproduction of The Michigan Court of Appeals unpublished decision of August 9, 2005, Madison Anderson, Plaintiff-Appellant v. Ford Motor Company, Defendant-Appellee is provided below along with Petitioner Analysis and Comment.

STATE OF MICHIGAN
COURT OF APPEALS

MADISON ANDERSON	
Plaintiff-Appellant	Unpublished
v.	August 9, 2005
FORD MOTOR COMPANY	No. 253090
Defendant-Appellee	Wayne County Circuit Lower Ct. No. 02-238532-CZ

/

Before Whitbeck, C.J. and Sawyer, and Sawyer and Fitzgerald, JJ
PER CURIAM

Plaintiff, Madison Anderson, appeals as of right from the Trial Court's Orders granting Summary Disposition for Defendant, Ford Motor Company, in this employment discrimination case. We affirm. We decide this Appeal without oral argument pursuant to MCR 7.214(E)

I. BASIC FACTS AND PROCEDURAL HISTORY

Anderson has worked for Ford for over 50 years, and has been in his current position of Industrial Wastewater Operator since 1979. Anderson who is black, filed suit alleging a hostile work environment and disparate treatment due to racial discrimination. Anderson's Complaint included multiple incidents of conduct by fellow employees, including having garbage placed in his chair; being told, in profane terms, to "shut his 'f-ing' mouth", being stared down in a menacing way for over 55 minutes and having his chair locked in an office when others chairs were available for use.

Anderson also stated that he received a reprimand and warning for being reported away from his job, but according to Anderson, the person who

allegedly observed his absence was never identified. Anderson received a three-day suspension without pay that was reportedly due to untreated wastewater mixing with treated wastewater and being released; but Anderson stated that such event did not occur, rather there was a malfunction with the computer readouts. Finally, Anderson claimed that he was not given instruction for one year on how to use a new computer survey system to request and receive overtime.

The Trial Court dismissed both counts of Anderson's Complaint after two separate Motions for Summary Disposition under MCR 2.116(C)(8) and (C)(10).

II. SUMMARY DISPOSITION

A. Standard of Review:

We reviewed denova the Trial Court's ruling on a Motion for Summary Disposition. Maiden v. Rozwood 461 Mich 109, 118; 597 NW2d 817 (1999).

B. Legal Standards:

Summary Disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim and permits Summary Disposition to be granted when the allegations pleaded fail to state a legal claim. Radtke v. Everett 442 Mich 368, 374; 501 NW2d 155 (1993). The Reviewing Court assumes "that all factual allegations in the non-moving party's pleadings are true and determine(s) if there is a legally sufficient basis for the claim. Salinas v. Genesys Health System, 263 Mich App 315, 317; 688 NW2d 112 (1004).

Summary Disposition under MCR 2.116(C)(10) tests the factual basis underlying a claim Radtke, supra at 374. Summary Disposition is proper when there is no genuine issue as to any material fact. See West v. General Motors Corp. 469 Mich 177, 183; 665 NW2d 468 (2003). "A genuine issue of material fact exists when the record giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ. West v. General Motors Corp. supra. When a Motion under (C)(10) is made and supported "[a]n adverse party may not rest upon the mere allegations or denials of his or her pleadings, but must, by affidavits or as otherwise provided in this rule set forth specific facts showing that there is a genuine issue for trial. Meyer v. Centerline, 242 Mich. App. 50, 574; 619 NW2d 182 (2000).

C. HOSTILE WORK ENVIRONMENT

To establish a prima facie case of discrimination based on a hostile work environment a Plaintiff must show that (1) the employee belonged to a protected group; (2) the employee was subjected to communication or conduct on the basis of that protected status; (3) the employee was subjected to unwelcome conduct or communication involving that protected status; (4) the unwelcome conduct was intended to or did in fact substantially interfere with the employee's employment or created an intimidating, hostile, or offensive work environment; and (5) respondent superior Radtke, supra at 382-383; Quinton v. Cross & Peters Co., 451 Mich 358; 368-369; 547 NW2d 314 (1996). With respect to the second element, the Plaintiff must show that but for the fact of this protected class he would not have been the object of harassment. Radtke, supra at 383.

In the present case, Anderson's pleadings failed to show that any of the conduct or activities complained of were incurred because of his race, or would not have occurred but for his race. Therefore, the Pleadings cannot establish a prima facie case of hostile work environment and the Trial Court properly granted Summary Disposition based on MCR 2.116(C)(8).

D. DISPARATE TREATMENT

Anderson's second claim is one of discrimination leading to disparate treatment. A prima facie case of discrimination can be shown when similarly situated employees are treated differently than the Plaintiff. Smith v. Goodwill Industries of West Michigan, 243 Mich App 438, 448; 622 NW2d 337 (2000). When disparate treatment is the framework for a discrimination claim, "a Plaintiff may establish a prima facie case of prohibited discrimination by demonstrating that the Plaintiff suffered an adverse employment action under circumstances giving rise to an inference of discrimination. Wilcoxon v. Minnesota Mining & Mfg. Co., 235 Mich App 347, 359; 597 NW2d 250 (1999).

All discrimination claims include an adverse employment action as a necessary element. Wilcoxon, supra at 362. An adverse employment action in the context of discrimination claims "(1) must be materially adverse in that it is more than mere inconvenience or an alteration of job responsibilities" and (2) must have an objective basis for demonstrating that the change is adverse, rather than the mere subjective impression of the Plaintiff" Meyer, supra at 569. A materially adverse employment action may include actions such as "termination

of employer, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities Wilcoxon at 363.

Anderson provided two incidents of discipline and an allegation that he was singled out due to his race concerning the use of the computer survey. The first disciplinary incident Anderson cited as an allegation of being "off the job" that led to disciplinary action in the form of a reprimand and warning without loss of pay. Such action does not constitute a materially adverse employment action because there was no consequence to or alternation of his pay, status or responsibilities. Wilcoxon, supra.

The second disciplinary incident involved the overflow of untreated wastewater into treated wastewater which led to a three-day suspension without pay. Ford provided a legitimate non-discriminatory reason for the employment action that Anderson did not counter before the Trial Court. Further, Anderson did not show that any other wastewater operator had ever been in a similar situation or was treated differently in such a situation. In a Motion for Summary Disposition under MCR 2.116(C)(10), Anderson, as the non-moving party, cannot rest on the allegation or denials in his Pleadings. Instead, Anderson was required to set forth specific facts showing that there is a genuine issue for trial. Meyer, supra at 574.

Similarly, Anderson did not set forth any specific facts in response to an Affidavit from Ford, which stated that instruction on how to use the overtime computer survey were posted only ten feet from the computer. There was no evidence to show that Anderson was singled out regarding access to or the use of the computer survey because of his race.

Affirmed

/S/ William C. Whitbeck
/S/ David H. Sawyer
/S/ E. Thomas Fitzgerald

Order

Michigan Supreme Court
Lansing, Michigan

December 27, 2005

Clifford W. Taylor
Chief Justice

129379

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

MADISON ANDERSON,
Plaintiff-Appellant,

v.

SC: 129379
COA: 253090
Wayne CC: 02-238532-CZ

FORD MOTOR COMPANY,
Defendant-Appellee.

/

On order of the Court, the application for leave to appeal the August 9, 2005 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this court.

Seal of the Michigan Supreme Court,
Lansing, Michigan — t1219

I, Corbin R. Davis, Clerk of the Michigan Supreme Court certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 27, 2005

/s/ Corbin R. Davis
Clerk

Order

Michigan Supreme Court
Lansing, Michigan

February 27, 2006

Clifford W. Taylor
Chief Justice

129379(72)

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

MADISON ANDERSON,
Plaintiff-Appellant,

v.

SC: 129379
COA: 253090
Wayne CC: 02-238532-CZ

FORD MOTOR COMPANY,
Defendant-Appellee.

/

On order of the Court, the motion for reconsideration of this Court's order of December 27, 2005 is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

Seal of the Michigan Supreme Court,
Lansing, Michigan — p0221

I, Corbin R. Davis, Clerk of the Michigan Supreme Court certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

February 27, 2006

/s/ Corbin R. Davis
Clerk

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

MADISON ANDERSON,
Plaintiff

v.

FORD MOTOR COMPANY,
Defendant.

Case No.: 02-238532-CZ
HON. DAPHNE MEANS CURTIS

/

Madison Anderson
Plaintiff in Pro Per
3831 Kendall
Detroit, Michigan 48238
(313) 883-3610

Rick A. Haberman (P57269)
Dickinson Wright, PLLC
Attorney for Defendant
500 Woodward Ave., Ste. 4000
Detroit, Michigan 48226
(313) 223-3676

/

AFFIDAVIT OF ALEX FREY

STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

ALEX FREY, having been first duly sworn, deposes and says as follows:

1. I am currently employed as a General Supervisor in the Central Maintenance Department at Ford Motor Company's Wixom Assembly Plant. In that capacity, I supervise the Wastewater Treatment Plant, and also supervise Plaintiff Madison Anderson. I am competent to testify as to the contents of this Affidavit upon personal knowledge.

2. On August 18, 2000, Mr. Anderson was issued a Disciplinary Action Report based on overflows which occurred at Wixom's Wastewater Treatment Facility on August 15, 2000. A copy of this Disciplinary Action Report is attached hereto as Exhibit A.

3. As a result of Mr. Anderson's failure to properly monitor the wastewater treatment tanks, untreated wastewater was allowed to mingle with

treated wastewater which was then discharged from the facility.

4. As a result of this error, Ford was required to notify the City if Wixom that 200 gallons of untreated wastewater had been mistakenly released. A letter from Ann McCormick, an environmental engineer at Ford memorializing this notification is attached to this Affidavit as Exhibit B.

5. To my knowledge, no other operator in the Wastewater Treatment Facility has ever allowed untreated wastewater to mingle with treated wastewater which was then discharged from the Facility.

6. I have examined a videotape and various log sheets provided by Mr. Anderson in discovery. A videotape, which purports to record screen readings on April 30, 2001 at 6:48 p.m., is an obvious manipulation. The screen depicted on the videotape displays a simultaneous overflow in tanks Nos. 1, 2, and 3. It is impossible to have a simultaneous overflow in all three tanks without wastewater backing up into the plant. We have no record of this happening on April 30, 2001. Absent these circumstances, the only way to demonstrate such a simultaneous overflow is to physically manipulate the buoys in each of the three tanks.

7. The Wixom Facility and its Wastewater Treatment Facility utilize a computerized overtime survey to distribute overtime to hourly employees. Since this system has been in effect at the Wastewater Treatment Facility, directions for the use of this survey have been posted on a bulletin some ten feet away from the computer on which employees enter their survey information. Mr. Anderson, as well as the other employees under my supervision, had equal access to these directions. To date, no other employee has complained of being unable to enter information on the overtime survey.

FURTHER AFFIANT SAYETH NOT.

_____

Alex Frey

Subscribed and sworn to before me,
this ____ day of September, 2003.

_____

Notary Public, Wayne County, Michigan

My Commission Expires: _____

DETROIT 18260-2009 753757

Exhibit A

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
First National Building, Suite 600
Detroit, Michigan 48226
Telephone 226-7636

SETTLEMENT AGREEMENT

1. In exchange for the promises made by Ford Motor Company contained in paragraph (2) of this Agreement, Madison Anderson agrees not to institute a lawsuit under Title VII of the Civil Rights Act of 1964 based on Charge Number 054-76-3753 filed with the Equal Employment Opportunity Commission, and the Equal Employment Opportunity Commission agrees not to use this charge as the jurisdictional basis for the civil action under Section 706(f)(1) of Title VII, in compliance with the Conciliation Agreements in Charge TNP 4-C-1000.

2. In exchange for the promises of Madison Anderson and the Equal Employment Opportunity Commission contained in paragraph (1) of this agreement, the Ford Motor Company agrees to pay $1,500 to Madison Anderson. It is understood that the above amount is subject to appropriate federal, state and local withholding for income taxes and FICA. Further, based upon its determination of current work force requirements, Ford Motor will recall Madison Anderson, in accordance with his seniority, within 30 days from the date of this agreement, to the classification of Industrial Waste Treatment Operator and Minor Maintenance. Thereafter, Mr. Anderson's employment shall continue to be governed by applicable Ford work force requirements and the terms of the Ford-UAW Collective Bargaining Agreement.

3. This agreement constitutes the complete understanding between the respondent, charging party and the Equal Employment Opportunity Commission. No other promises or agreements among these parties and relating to Charge Number 054-76-3753 shall be binding unless signed by them.

4. It is understood that this agreement does not constitute an admission by the respondent of any violation of Title VII of the Civil Rights Act.

5. The respondent agrees to provide written notice to the Director of the Detroit District Office within 10 days of satisfying each obligation

specified at paragraph (2) of this agreement.

6. These parties agree that this agreement may be used as evidence in a subsequent proceeding in which any of the parties allege a breach of this agreement.

7. The Equal Employment Opportunity Commission's participation in this agreement does not reflect any judgment by the Commission on the merits of the charge. Furthermore, the Equal Employment Opportunity Commission does not waive or in any manner limit its right to process or seek relief in any other charge.

/s/ Leah Carson, Respondent Date: 5/27/81
/s/ Madison Anderson, Charging Party Date: 6/12/81

On behalf of the Commission:

Delores L. Rozzi
District Director

Date

Apr. 17

STATE OF MICHIGAN
IN THE THIRD JUDICIAL CIRCUIT FOR THE COUNTY OF WAYNE

MADISON ANDERSON,
Plaintiff,

vs.

FORD MOTOR CAR COMPANY,
Defendant

02-238532 CZ 10/29/2002
JDG: DAPHNE MEANS CURTIS
ANDERSON MADISON
vs
FORD MOTOR CAR COMPANY

_____/

MADISON ANDERSON
Plaintiff in Pro Per
3831 Kendall
Detroit, Michigan 48238
(313) 883-3610

_____/

COMPLAINT

The Plaintiff says:

I

That the Plaintiff, Madison Anderson herein resides in the City of Detroit, Wayne County, Michigan.

II

That Ford Motor Car Company, the defendant herein, is a world-wide automobile corporation, having as one of its plants operating in Dearborn, Michigan, the County of Wayne, and authorized to do business in the State of Michigan.

III

That defendant, through its supervisory personnel and employees have conspired by means of an established pattern to harass and discriminate against the plaintiff based on race in violation of the Elliot-Larsen, Act, MCLA 37.2101 et seq. with the specific intent to cause the plaintiff termination and/or wage disparity.

IV

That such conspiratorial conduct of harassment and race discrimination has been continuous since 1996 when Alex Frey (supervisor) posted a sign in the waste treatment lab above plaintiff's chair in bold print reading "Shit House Lawyer Throne."

V

That Alex Frey admitted in the presence of John Conley and Mario Delicio (committee men) to posting the sign.

VI

That upon the plaintiff's filing a grievance on the above matter, sections IV and V, Mr. Stu Rinfusz, a similarly situated hourly employee like the plaintiff, wrote a letter designed to discredit the plaintiff's position while bolstering the defense of Alex Frey.

VII

That such above-named conduct (VI) on the part of Mr. Stu Rindfusz was expected and indicative of the type of support that Alex Frey (supervisor) could rely upon to the detriment of plaintiff, especially when Frey has and continues to provide Rindfusz all the overtime he wants to work while requiring plaintiff to work cross-shifts in order to garner overtime employment.

VIII

That in spite of the numerous instances of plaintiff's grievances indicating labor improprieties, Gary Polzkowski and Alex Frey have continued to violate Ford Motor Company Anti-Harassment Policy by promoting the continuing existence of both racially discriminatory activities and hostile work environment, respectively intended to cause plaintiff's eventual firing as evidenced by the following recent conduct directed at plaintiff.

A. That on June 20, 1999, Stu Rindfusz opened and endorsed plaintiff's check #2176960561.

B. That on May 23, 2000, Stu Rindfusz said in conversation to plaintiff to "shut your fucking mouth."

C. That on July 28, 2000, Stu Rindfusz put garbage in plaintiff's chair.

D. That on August 9, 2000, Stu Rindfusz stared plaintiff down in a menacing way for forty-nine (49) minutes straight.

E. That on August 15, 2000, Stu Rindfusz and plaintiff were placed on number 2 shift in the waste treatment plant and while plaintiff was at lunch Stu Rindfusz removed the log sheet and reported to the front office that there was an overflow (but advised the front office that he switched the tanks) and that the plaintiff was responsible.

F. That such action of Stu Rindfusz (VIIIe) constituted a purposive intent upon the part of Stu Rindfusz to lay the blame upon the plaintiff as an instance of plaintiff dereliction of duty.

G. That following the report of Stu Rindfusz to the front office of plaintiff's alleged carelessness or dereliction of duty relative to the alleged overflow, the supervisory personnel as agents of the defendant conspired or agreed with the allegations of Stu Rindfusz and subsequently disciplined the plaintiff by giving him three (3) days off. [This was done in spite of insistence of plaintiff that the readings were faulty due to problem with equipment] because the overflow light came on, see, on August 21, 2000 where batch #2 overflow light came on with only 240,000 gallons of water in the tank.

H. That in substantiation of plaintiff's allegation of racially discriminatory or disparate treatment by defendant between similarly situated employees, Stu Rindfusz computer screen readings of both August 8 and August 10, 2000, indicate that while Rindfusz was the operator there existed an overflow of both days; however, Stu Rindfusz was given no time off.

HOSTILE ENVIRONMENT AND RACE DISCRIMINATION

COUNT II

Plaintiff realleges and incorporates Paragraphs I-VIII (A-H) and alleges further that the continuing presence of a hostile environment against the plaintiff has remained unabated, and that the discriminatory conduct against the plaintiff, based on race, persists by the continuing conspiratory actions of defendant supervisory personnel, the employees employed under them, as follows:

I

That on August 31, 2000, there was another instance reflecting the type of hostile environment the plaintiff had to work in day after day; the plaintiff was reportedly observed by a Labor relations person away from his job during the time he was supposed to be performing his duties. Yet the Labor relations person was never identified nor was the location specified where the plaintiff was seen. In spite of the lack of specifies, a disciplinary action report was filed against the plaintiff with a R&W penalty assessed (see attached.)

II

That on or about July 2001, the defendant initiated a computer process termed "a computer survey" as a means of both accessing and requesting overtime deployment.

III

That in spite of the installation of the "computer survey," the plaintiff had been denied instructions as to how to access the "computer survey," for overtime work while other similarly situated employees had been granted instruction.

IV

That the above information (paragraphs I and II) was made available to the plaintiff subsequent to his denial of opportunity to work overtime for week ending 7/14/02.

V

That in the interim between July 2001, and July of 2002, the presence of a hostile environment and harassment was clearly evidence on September 4, 2001, when the chair the plaintiff utilizes during the course of his work was locked in the office of Ron Bays, such chair remained in the office of Ron Bays for several days while the chair of Stu Rindfusz and Ron Jaworski similarly situated white employees, remained readily available and fully intact thereby enabling them to fulfil their work tasks unhampered.

DAMAGES

Wherefore, due to the above discriminatory and conspiratory conduct of defendant, based on race, while occurring in a continuing hostile and harassing environment, causing plaintiff great mental anguish, loss of sleep, physical damage and medical treatment, the plaintiff requests the awarding of damages in the amount of $2,000,000.00 (two million dollars), consequential and punitive damages.

Respectfully submitted,
/s/ Madison Anderson

Dated: 10/29/02

App. 22

SHIT-HOUSE

Should the above be one word?? (SHL)

LAWYERS

THRONE

Many months ago (at least 4-5) a sign was posted at the wastewater treatment plant which said something on the order of "Shit House Lawyers Throne." It was directed towards me. I do not know the origin of the sign, but it was common knowledge that it had something to do with my reading law books because of a legal dispute. A neighbor had moved some survey stickers and then given me a forged and fraudulent document performed by a surveyor who had died six years before the survey was performed. Once I had even joked to Mr. Frey and others that the sign should be moved into the bathroom and placed above the toilet because I had thought about my legal problem while using the facilities. Everyone laughed!

Although I do not know the origin of the sign, it did remain in the office for many months. To my knowledge Mr. Frey had nothing to do with the sign. I felt, and others did too, that it was meant as a joke on me. Mr. Frey did not move it to the lavatory area. That was a joke on me, by one, because the Union and the Company was asking us to keep track of holiday overtime. Imagine employees being asked to keep track of overtime without appearing to have a conflict of interest. Thus the "Shit House Lawyer" observation.

/s/ Stuart A. Rindfusz
Date: 11/1/96

Rec By: /s/ L.V. Frey
11/1/96
11:00 A.M.

App. 24

10/10/03

ATTENTION ALL WWTP OPERATORS

WWTP Schedule

Wednesday, October 15th., Thursday, October 16th., & Friday, October 17th.

Henry — 12 hours, 4 over
Stu — Medical
Ron – 12 hours, 4 early

Starting Monday, October 20th. – Mac Anderson will be covering day shift (2nd. shift) while Stu Rindfusz is on Medical.

Thank you,

/s/ Ann McCormick

/s/ A. Knott

/s/ P. Thornton

FORD MOTOR COMPANY

ANTI-HARASSMENT POLICY

CORPORATE POLICY

Ford Motor Company has a policy of *zero tolerance* for:

- Sexual harassment
- Racial or national origin harassment
- Harassment based on sex, race, color, religion, age, national origin, disability, sexual orientation, or veteran status;
- Retaliation against anyone for making a good-faith complaint of such harassment or for cooperating in Company investigations of such complaints

This Policy protects:

- All Ford employees (regular, part-time, or supplemental)
- All independent contractors, temporary employees and agency employees
- All visitors to the Ford workplace, such as vendors and customers

Such harassment or retaliation violates Ford Motor Company's Policy:

- Regardless of whether it is committed by an employee, customer, vendor, agent, or other third party
- Regardless of the sex, race, or other characteristics of the person responsible
- Regardless of whether the harassment or retaliation violates or does not violate federal, state or local law

Violation of this Policy will result in discipline, up to and including discharge.

Ford Motor Company

DEFINITION OF HARASSMENT

"Harassment" in this Policy means conduct of a harassing nature, whether in the workplace or off-site, which has the effect of interfering with someone's work performance, or which creates an intimidating, hostile, or offensive working environment.

What is acceptable, amusing, or inoffensive to some may be unwelcome, abusive, or offensive to others.

The following is a list of examples of conduct that Ford considers to be

harassment. The list is not intended to be all-inclusive.

Sexual Harassment

- Abusive, offensive, or unwelcome sexual conversation, innuendo, jokes, or teasing
- Unwelcome sexual flirtation, advances, or propositions
- Explicit demands for sexual favors
- Subtle pressure for sexual activity
- Offensive, insulting, or suggestive gestures, leering, sounds or comments
- Unwanted physical contact, including touching, petting, kissing, hugging, pinching, or brushing against another person
- Displaying sexually explicit or suggestive messages through graffiti, clothing, cartoons, photographs, or other items
- Using your position to coerce sexual favors through threats or rewards
- Granting promotions or other job favors because of participation in sexual activity
- Continuing to ask someone for dates or to meet after work after the person has made it clear that she or he does not want to go
- Graphic sexual comments about a person, whether or not said in that person's presence
- Comments on a person's appearance that make the person feel uncomfortable because of her or his sex
- Sexually oriented entertainment in the workplace, at Company functions, or at social gatherings organized by Ford employees where attendance consists predominantly of Ford employees and/or others associated with Ford
- Sending sexually graphic material through the Company e-mail system or other electronic devices (e.g., voice mail, text pagers, radios, etc.), or using the Company internet, Company mail, or Company computers for viewing such material

Racial or National Origin Harassment

- Using slurs or derogatory terms based on race, color, national origin, or ethnicity
- Telling jokes or stories that are derogatory toward members of a particular racial or ethnic group, whether or not members of that group are present
- Displaying graffiti or other derogatory or insulting writings based on race, color, national origin, or ethnicity
- Making degrading comments about a person of a different racial or ethnic group, or about that person's appearance

Harassment Based on Sex, Race, or National Origin

This category covers harassment motivated by an individual's sex, race, or national origin, even if the words or conduct do not explicitly refer to the subject of sex, race, or national origin:

- Demeaning or criticizing an individual because of her/his sex, race, or national origin. Example: "You're just a woman (or man), what do you know."
- Repeated comments that demean or criticize members of that sex, race, or national origin, even when made outside the hearing of such persons. Example: "Women (or men) are so stupid they can't get anything right."
- Sabotaging, damaging, or interfering with the work of anyone because of her or his sex, race, or national origin
- Threatening or intimidating anyone because of her or his sex, race, or national origin through the use of hostile or threatening words or behavior

Harassment Based on Religion, Age, Disability, Sexual Orientation, or Veteran Status

- Using slurs or derogatory terms about someone's religion, age, disability, sexual orientation, or veteran status
- Telling jokes or stories that are derogatory toward someone's membership in one of these groups
- Graffiti referring to such groups or a person in one of these groups
- Degrading comments about an individual in one of these groups, or about his or her appearance
- Demeaning or criticizing an individual because of her/his membership in one of these groups
- Comments that demean or criticize members of one of these groups, even when made outside the hearing of persons of that group
- Sabotaging, damaging, or interfering with the work of anyone because of her or his membership in one of these groups
- Threatening or intimidating anyone because of her or his membership in those groups.

PROHIBITION AGAINST RETALIATION

Ford Motor Company prohibits retaliatory actions against an employee that are motivated by the fact that the employee has made a good-faith complaint of harassment or by the fact that the employee has assisted or cooperated in an investigation of a complaint by someone else.

This Policy protects any employee who makes a complaint of harassment honestly believing that her or his complaint is justified, even if the Company should ultimately find that complaint unfounded.

The following are examples of actions that constitute forbidden

retaliation if motivated by the employee's having made a good-faith complaint of harassment or having cooperated in an investigation of such a complaint:

- Discharge, demotion, or other discipline of the employee
- Unfavorable changes in the employee's work assignment, workload, or other terms of employment
- Talking negatively about the employee to others
- Sabotaging, damaging, or interfering with the employee's work
- Ostracizing or excluding the employee or subjecting him or her to hostile treatment within the work group
- Holding the employee to different standards on the part of supervisors or coworkers
- Other inappropriate conduct or treatment that is hostile or affects the employee's workplace, equipment, tools, or personal effects.

Retaliation in violation of this Policy is treated equally seriously as harassment, and will result in discipline up to and including discharge.

RESPONSIBILITY OF EMPLOYEES

Responsibilities of All Employees

Whether you are a manager, a supervisor, or a non-supervisory employee, you have the responsibility to make this Policy work by taking all of the following actions:

- If you believe you are the target of harassment or retaliation, to the extent you feel comfortable doing so, *tell the person to stop*
- *Immediately report any violation of this Policy* pursuant to the Complaint Procedure (see below)
- Cooperate with any investigation of a harassment complaint, whether brought by yourself or by someone else, by providing factual information to the Company's investigating personnel
- If other employees tell you they find your behavior or conversation unwelcome and ask you to stop, honor their request, even if you feel they are being oversensitive

Special Responsibilities of Managers and Supervisors

If you are a manager or supervisor, Ford expects you to:

- Set an example by refraining from any activity of harassment or retaliation
- Discuss this Policy with all employees under your supervision
- Monitor your work area for indications of any type of harassment or retaliation
- Report any incident of harassment or retaliation that you witness or become aware of to the appropriate Human Resources personnel
- Immediately intervene to stop harassment, retaliation, or conduct that could be interpreted as such

- Caution employees who appear to be engaging in such behavior
- Report *all* complaints of harassment or retaliation to the appropriate Human Resources personnel, regardless of your opinion of whether the complaint is well-founded
- After reporting the incident or complaint to Human Resources, cooperating with Human Resources to assure that the problem does not recur or that retaliation does not ensue

COMPLAINT PROCEDURE

Ford Motor Company has implemented a Complaint Procedure designed to encourage any employee (whether regular, part-time, or supplemental), any independent contractor or temporary or agency employee, and any visitor to our workplace to report any instance of harassment or retaliation that violates this Anti-Harassment Policy.

If you believe you are being harassed or retaliated against in violation of this Policy, or if you observe someone else being subjected to such conduct, *report this conduct immediately to management.*

Who to Complain to

You may report such a violation to any of the following:

- To your supervisor or manager
- To your local Human Resources representative
- To the Company harassment hotline, whose number is (888) 735-6650
- To the Corporate Diversity and Personnel Relations Office at Ford World Headquarters, whose number is (313) 322-3751

If you are a member of a collective bargaining unit, you may also file a grievance through the collective bargaining grievance procedure.

How Complaints Are Investigated

Once an alleged violation of this Policy is reported to management, Human Resources will begin an investigation, usually within 24 hours. That investigation will be timely and thorough. When it is concluded, the Company will make such action as it deems justified by the facts. See below under "Penalties for Harassment/Retaliation/Misconduct."

Confidentiality

All complaints of harassment or retaliation filed through the Company's Complaint Procedure will be handled as confidentially as possible. The fact that a complaint has been filed will be made known only to those persons who need to be made aware of the complaint, such as the employee's supervisor, the alleged wrongdoer, and witnesses who must be interviewed in connection with the investigation. All persons thus contacted by Human Resources will be told not to discuss the complaint or the facts of the case with anyone else, and will be warned that retaliation against the person making the complaint is strictly forbidden.

Penalties for Harassment or Retaliation

If the investigation find that an employee has engaged in conduct that violates this Policy, penalties will depend on the nature of the offense. Any and all breaches of this Policy are considered serious. Appropriate discipline will be imposed, even for a first offense, ranging from a verbal warning, up to and including discharge.

Supervisors and managers who bear responsibility for allowing violations of this Policy to occur may also face discipline where:

- Their action or inaction contributed to the development of the environment that led to the offending conduct
- They failed to take appropriate action in response to receiving a complaint or witnessing an episode of harassment or retaliation.

In such cases, the manager or supervisor may be subject to disciplinary action, up to and including discharge. Such a finding may also affect the manager/supervisor's present or future assignment, promotability, or compensation.

YOUR RIGHT TO COMPLAINT TO GOVERNMENT AGENCIES

Employees are encouraged to use the above Complaint Procedure to report and resolve their complaints of harassment or retaliation. However, employees may also file a complaint with the appropriate local, state, or federal enforcement agency. These include:

Salaried Personnel Contact Number (248) 344-5432
Labor Relations Contact Number (248) 344-5450
Equal Employment Opportunity Commission - Detroit District Office
477 Michigan Avenue, Room 865, Detroit, MI 48226
(313) 226-7636

App. 31

Sheet B

Daily Log 8-15-00

TIME	BATCH TANK #1	BATCH TANK #2	BATCH TANK #3	E-COAT NORTH	E-COAT SOUTH	
12 AM	90	155	334	1	2	
1						
2	177	72	335	1	2	
3						
4	250	72	237	1	2	
5						
6	322	73	135	1	2	
7						
—> 8	352	136	54	1	2	
9						
10	352	199	54	1	2	
11						
12 PM						
1:30 PM	210	383	54	Switched to #3, 1892 Tank overflowing		
1:55 PM	86	384	83			

	SLUDGE TANK			EQ		
TIME	NORTH	SOUTH	E-COAT	TANK	F-7	F-11
12 AM	12	12	6	586	801	648
1						
2	12	11	1	597	799	651
3						
4	11	11	1	615	850	550
5						
6	11	10	2	632	849	652
7						
--> 8	10	10	3	631	-	650
9						
10	9	8	5	582	-	650
11						
12 PM						
1:30 PM						
1:55 PM						

TIME	
12 AM	
1	
2	
3	
4	
5	FLOW TOTALIZER READINGS
6	#1 SHIFT _____
7	_____
—> 8	30117069
9	
10	#2 SHIFT _____
11	_____
12 PM	30120396
1:30 PM	
1:55 PM	

EXHIBIT P

Ford Motor Company — Disciplinary Action Report

SHIFT: C | DISPOSITION BY: FOREMAN | LABOR RELATIONS | DATE: 8-18-00

SOCIAL SECURITY OR BADGE NO.	NAME	PLANT
432582717	ANDERSON, M —	WIXOM ASSEMBLY
COMPANY SENIORITY	**CLASSIFICATION**	**DEPT. NO.**
10-27-52	WASTE W	3530

PRESENT CHARGE: POOR AND CARELESS WORKMANSHIP

EMPLOYEE DESIRES UAW REPRESENTATION: YES X | NO

EMPLOYEE'S SIGNATURE (IF NO)

PENALTY AND DATE ASSESSED: 3 DAYS 8/22, 8/23, 8/24

COMMITTEEMAN SHOULD SIGN HERE IF HE RECEIVED NOTIFICATION OF THIS ACTION: Ke Gutz

FOREMAN'S SIGNATURE: Mark Fenn

LABOR RELATIONS REPRESENTATIVE SIGNATURE

FACTS SUPPORTING CHARGE (LIST IN DETAIL) - ATTACH ADDITIONAL FORM IF MORE SPACE NEEDED

ON AUG 15, 2000 MR ANDERSON WAS ASSIGNED OPERATIONS Which IS MONITORING AND TREATMENT OF WASTE WATER. MR ANDERSONS Last readings were taken at 10^00 Am, The BATCH TANK high level alarm went OFF at 12^25 AND over Flow Alarm went OFF at 1-10 pm, This indicates untreated WASTE WATER WAS ENTERING The TREATED WASTE water being discharged. Mr RINDFUSZ switched flows to prevent this, while MR ANDERSON WAS not present, IF UNTREATED WASTEWATER WERE ALLOWED TO BE

MD REL APR 91 4600 (PERSONAL NOTES MAY NOT BE USED) — LABOR RELATIONS COPY

Discharged, this would violated our discharge permit with the city which could cause a notice of violation and possible fines.

BEST AVAILABLE COPY

P 16880

9-5-2000

Ford Motor Company, **Disciplinary Action Report**

SHIFT	DISPOSITION BY: FOREMAN ☐ LABOR RELATIONS ☐	DATE

SOCIAL SECURITY OR BADGE NO.	NAME	PLANT
437 58 7717	Mark Anderson	Wixom Assembly
COMPANY SENIORITY	**CLASSIFICATION**	**DEPT. NO.**
5-1-57	Weatherstrip Repair Operator	3530

PRESENT CHARGE	EMPLOYE DESIRES UNION REPRESENTATION	YES	NO	EMPLOYE'S SIGNATURE (IF NO)
		X		

PENALTY AND DATE ASSESSED	COMMITTEEMAN SHOULD SIGN HERE IF HE RECEIVED NOTIFICATION OF THIS ACTION
Verbal Reprimand RW 9/5/00	
FOREMAN'S SIGNATURE	**LABOR RELATIONS REPRESENTATIVE SIGNATURE**

FACTS SUPPORTING CHARGE (LIST IN DETAIL) ATTACH ADDITIONAL FORM IF MORE SPACE NEEDED

Reported off the job, witness by Labor Relations personnel on 8/31/00.

IND REL APR 91 4600 (Previous editions may not be used) UNION COPY

Ford Motor Company

Disciplinary Action Report

SHIFT	DISPOSITION BY: FOREMAN ☐ LABOR RELATIONS ☑	DATE
2		06/25/03

SOCIAL SECURITY OR BADGE NO.	NAME	PLANT
372-48-3454	HERRON, D	WAP - Wixom Assy. Plant

COMPANY SENIORITY	CLASSIFICATION	DEPT. NO.
11/13/72		4720

PRESENT CHARGE	EMPLOYEE DESIRES UNION REPRESENTATION YES ☑ NO ☐	EMPLOYEES SIGNATURE (IF NO)
Gross Negligence		

PENALTY AND DATE ASSESSED	COMMITTEEMAN SHOULD SIGN HERE IF HE RECEIVED NOTIFICATION OF THIS ACTION
R&W, 2 WEEKS OFF serve 7/14/03, thru 11/21/03	Tom M. Stull

FOREMAN'S SIGNATURE

LABOR RELATIONS REPRESENTATIVE SIGNATURE

FACTS SUPPORTING CHARGE (LIST IN DETAIL) - ATTACH ADDITIONAL FORM IF MORE SPACE NEEDED

On 6/12/03 there was a spill in the phosphate tanks that was not reported to management. Lack of due diligence in not reporting an environmental spill has resulted in spillage into the City of Wixom water. The phosphate levels were above Wixom's permitted amount, which will cause a fine to the Ford Motor Company from the City of Wixom.

If Mr. Herron had reported this spillage in a responsible manner, as directed in chemical safety training, no matter what the degree, the spillage could have been contained within the area.

REL 4600 91

LABOR RELATIONS COPY

Ford **Disciplinary Action Report**

SHIFT	DISPOSITION BY:	DATE
2	FOREMAN ☐ LABOR RELATIONS ☐	6/21/03

SOCIAL SECURITY OR BADGE NO.	NAME	PLANT
372-48-3454	Don Herrin	Wixom

COMPANY SENIORITY	CLASSIFICATION	DEPT. NO.
4/7/73	Paint/Solution Operator	4790

PRESENT CHARGE
Poor/Careless workmanship

EMPLOYEE DESIRES UNION REPRESENTATION: YES ✓ NO

EMPLOYEE'S SIGNATURE (IF NO)

PENALTY AND DATE ASSESSED
3 Day off 6/23-6/27

COMMITTEEMAN SHOULD SIGN HERE IF HE RECEIVED NOTIFICATION OF THIS ACTION
Tom Hall

FOREMAN'S SIGNATURE
Del Carr

LABOR RELATION'S REPRESENTATIVE SIGNATURE

FACTS SUPPORTING CHARGE (LIST IN DETAIL) - ATTACH ADDITIONAL FORM IF MORE SPACE NEEDED

ON 6/12/03 Don Herrin was filling the Bonderite 958 RC Dip Tank and during the fill cycle walked away. Because he left and forgot about filling the tank, it resulted in over flowing the tank into the drainage grates, which drains to the wastewater treatment facility. Approx. 2782 gallons of Bonderite material was lost to drain at a cost of $29,073 for this material. The wastewater facility had to neutralize this material with approx. 900 gallons of caustic. This spill was not communicated to the paint management until 6/19/03. Don did not make anyone aware of this spill until it was brought to our attention.

Ford Motor Company

EXHIBIT E

Disciplinary Action Report

SHIFT	DISPOSITION BY:	DATE
3	FOREMAN ☐ LABOR RELATIONS ☑	10/23/03

SOCIAL SECURITY OR BADGE NO.	NAME	PLANT
432-58-2217	ANDERSON, M	WAP - Wixom Assembly Plant

COMPANY SENORITY	CLASSIFICATION	DEPT. NO.
10/27/52		8900

PRESENT CHARGE	EMPLOYEE DESIRES UNION REPRESENTATION	EMPLOYEE'S SIGNATURE (IF NO)
JOB REFUSAL	YES ☑ NO ☐	

PENALTY AND DATE ASSESSED: 1 DAY SUSP 10/27/03

COMMITTEEMAN SHOULD SIGN HERE IF HE RECEIVED NOTIFICATION OF THIS ACTION

FOREMAN'S SIGNATURE

LABOR RELATION'S REPRESENTATIVE SIGNATURE

FACTS SUPPORTING CHARGE (LIST IN DETAIL) - ATTACH ADDITIONAL FORM IF MORE SPACE NEEDED

ON 9/26/03 MR. ANDERSON WAS INSTRUCTED TO REPORT TO THE #2 (DAY) SHIFT ON 10/20/03 BY HIS SUPERVISOR. MR. ANDERSON IGNORED HIS SUPERVISOR'S INSTRUCTIONS AND REPORTED ON THE #3 (AFTERNOON) SHIFT.

MR. ANDERSON IS AGAIN INSTRUCTED TO REPORT TO THE #2 SHIFT AT 7:30 AM ON FRIDAY 10/24/03 OR BE SUBJECTED TO MORE SEVERE DISCIPLINARY ACTION.

4:58 Pm

AND REL APR 91 4600 (Previous editions may not be used)

LABOR RELATIONS COPY